

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ROBERT C. ASHE and JEFFREY S. GOHN,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

ARROW FINANCIAL CORPORATION,
THOMAS J. MURPHY, PENKO K. IVANOV,
and EDWARD J. CAMPANELLA,

Defendants.

Civil Action No. 1:23-cv-00764-AMN-DJS

**DECLARATION OF WILLIAM J. SUSHON IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

I, William J. Sushon, hereby declare under penalty of perjury under 28 U.S.C. § 1746 that the following is true and correct:

1. I am an attorney duly admitted to practice and in good standing to practice in this Court, a partner of O'Melveny & Myers LLP, and counsel to defendants Arrow Financial Corporation ("Arrow"), Thomas J. Murphy, Penko K. Ivanov, and Edward J. Campanella (collectively, "Defendants"). I submit this declaration in support of Defendants' motion to dismiss the amended complaint in this action (Dkt. No. 26) and to put before the Court the following documents:

2. **Exhibit A** is a true and correct copy of relevant excerpts of the NASDAQ Rulebook, 5200 Series, General Procedures and Prerequisites for Initial and Continued Listing on the NASDAQ Stock Market, downloaded on February 8, 2024, from NASDAQ's generally accessible website at

<https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%205200%20Series>.

3. **Exhibit B** is a true and correct copy of Arrow's Form 8-K, filed with the Securities and Exchange Commission ("SEC") on January 27, 2022, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <https://www.sec.gov/Archives/edgar/data/717538/000071753822000058/ex99-earningsye2021.htm>.

4. **Exhibit C** is a true and correct copy of Arrow's Form 8-K, filed with the SEC on July 27, 2022, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <https://www.sec.gov/Archives/edgar/data/717538/000071753822000172/ex99-earningsq22022.htm>.

5. **Exhibit D** is a true and correct copy of relevant excerpts¹ of Arrow's quarterly report on Form 10-Q for the period ended June 30, 2022, filed with the SEC on August 5, 2022, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <http://www.sec.gov/Archives/edgar/data/arow-20220630.htm/000071753822000179/0000717538-22-000179-index.html>.

6. **Exhibit E** is a true and correct copy of relevant excerpts of Arrow's quarterly report on Form 10-Q for the period ended September 30, 2022, filed with the SEC on November 7, 2022, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <http://www.sec.gov/Archives/edgar/data/arow-20220930.htm/000071753822000237/0000717538-22-000237-index.html>.

7. **Exhibit F** is a true and correct copy of Arrow's Form 12b-25, filed with the SEC on March 16, 2023, and downloaded on February 8, 2024, from the SEC's EDGAR webservice

¹ Defendants will supply complete copies of any excerpted documents at the Court's request.

at <http://www.sec.gov/Archives/edgar/data/arow-nt10k12312022.htm/000071753823000099/0000717538-23-000099-index.html>.

8. **Exhibit G** is a true and correct copy of Arrow's Form 12b-25/A, filed with the SEC on March 31, 2023, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <http://www.sec.gov/Archives/edgar/data/amendedarow-nt10k12312022.htm/000071753823000103/0000717538-23-000103-index.html>.

9. **Exhibit H** is a true and correct copy of Arrow's Form 8-K, filed with the SEC on April 5, 2023, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <http://www.sec.gov/Archives/edgar/data/arow-20230331.htm/000071753823000106/0000717538-23-000106-index.html>.

10. **Exhibit I** is a true and correct copy of Arrow's Form 12b-25, filed with the SEC on May 11, 2023, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <http://www.sec.gov/Archives/edgar/data/arow-nt10q3312023.htm/000071753823000119/0000717538-23-000119-index.html>.

11. **Exhibit J** is a true and correct copy of Arrow's Form 8-K, filed with the SEC on May 15, 2023, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <http://www.sec.gov/Archives/edgar/data/arow-20230512.htm/000071753823000122/0000717538-23-000122-index.html>.

12. **Exhibit K** is a true and correct copy of relevant excerpts of Arrow's annual report on Form 10-K for the year ended December 31, 2022, filed with the SEC on July 18, 2023, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <http://www.sec.gov/Archives/edgar/data/arow-20221231.htm/000071753823000132/0000717538-23-000132-index.html>.

13. **Exhibit L** is a true and correct copy of relevant excerpts of Arrow's quarterly report on Form 10-Q for the period ended March 31, 2023, filed with the SEC on July 27, 2023, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <http://www.sec.gov/Archives/edgar/data/arow-20230331.htm/000071753823000145/0000717538-23-000145-index.html>.

14. **Exhibit M** is a true and correct copy of Arrow's Form 8-K filed with the SEC on October 27, 2022, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <https://www.sec.gov/Archives/edgar/data/0000717538/000071753822000229/ex99-afcaproves2023stockr.htm>.

15. **Exhibit N** is a true and correct copy of Arrow's Form 8-K filed with the SEC on October 26, 2023, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <https://www.sec.gov/Archives/edgar/data/0000717538/000071753823000218/ex99-declarationofthedecem.htm>.

16. **Exhibit O** is a true and correct copy of Arrow's Form 8-K filed with the SEC on January 30, 2023, and downloaded on February 8, 2024, from the SEC's EDGAR webservice at <https://www.sec.gov/Archives/edgar/data/0000717538/000071753823000041/ex99-earningsye2022.htm>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 9th day of February, 2024, in Old Greenwich, Connecticut.

/s/ William J. Sushon
William J. Sushon